



HUMAN
RIGHTS
CAMPAIGN™

OPPOSE HR 3313 - MARRIAGE PROTECTION ACT

July 13, 2004

Dear Representative:

Tomorrow, the House Judiciary Committee will consider and mark up HR 3313, the Marriage Protection Act (MPA). The Human Rights Campaign (HRC) opposes this bill, and on behalf of our over 600,000 members nationwide, urges you to vote NO when it is marked up in committee tomorrow. This bill, sponsored by Representative Hostettler (R-IN), is inconsistent with the fundamental constitutional principles of equal protection, due process, and separation of powers.

The MPA purports to strip the federal courts of jurisdiction over challenges to the Defense of Marriage Act (hereinafter, "DOMA").¹ The key section of the proposed legislation reads as follows:

"No court created by Act of Congress² shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or determine any question pertaining to the interpretation of section 1738c of this title or of this section. Neither the Supreme Court nor any court created by Act of Congress shall have any appellate jurisdiction to hear or determine any question

¹ DOMA consists of two provisions. The first, codified at 1 U.S.C. § 7, defines "marriage" and "spouse" under federal law to include only opposite-sex partners. This definition currently serves to exclude same-sex couples from over 1,100 federal rights and benefits including Social Security survivors' benefits, veterans benefits, Family and Medical Leave, and the right to file joint tax returns. The second, codified at 28 U.S.C. § 1738c, purports to permit states to refuse to recognize out-of-state marriages between partners of the same sex.

² Courts "created by Act of Congress" refers to United States District Courts and the Courts of Appeal.

pertaining to the interpretation of section 7 of title 1.

REASONS TO OPPOSE MPA:

I. The MPA is Inconsistent with Equal Protection

The MPA singles out one group of people—lesbian and gay Americans—and saddles them with a unique burden not borne by other citizens. DOMA is a law that profoundly affects the recognition of same-sex relationships, and like any law, should be subject to constitutional scrutiny by the courts. By shielding DOMA from federal judicial review, the MPA closes the federal courts to a distinct class of people, leaving them open to all others. This unequal treatment of one group is the very essence of classifications that run afoul of the principle of Equal Protection. As the Supreme Court stated in its 1996 decision, *Romer v. Evans*,³ the “disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.”⁴ In *Romer*, the state of Colorado had enacted a constitutional amendment preventing the state or any subdivision from enacting legislation to protect lesbian and gay citizens. In striking down this amendment, the Court noted that it was particularly invidious because it made it more difficult for one group of citizens to seek aid from the government. “It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution’s guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.”⁵

The MPA slams the courthouse door to millions of lesbian, gay, bisexual and transgender Americans, leaving it open to all others. This is an unconstitutional violation of the right to Equal Protection of laws.

II. The MPA is Inconsistent with Separation of Powers

Although Congress has some power, under Article III, Section 2, of the United States Constitution, to impose certain “exceptions and regulations” on federal courts’ jurisdiction, the MPA exceeds Congress’ power and is an

³ 517 U.S. 620 (1996).

⁴ *Id.* at 633.

⁵ *Id.*

unconstitutional interference with the judiciary's domain. The principle of judicial review, part of the bedrock of our political system since *Marbury v. Madison*, protects citizens from overreaching by the legislative and executive branches. Our system of government depends for its vitality upon an independent judiciary that ensures that all legislation complies with the values in our founding document, the United States Constitution. Exempting legislative branch actions from judicial review is tantamount to amending the Constitution legislatively, which Congress lacks the power to do.

III. The MPA is Inconsistent with Due Process

Some contend that removing cases about a subject matter *in their entirety* from federal judicial review, while not offending Article III per se, runs afoul of external constitutional provisions such as the Fifth Amendment's Due Process Clause.⁶ Removing access to federal courts on a question of federal law, such as the constitutionality of DOMA, deprives an individual challenging such a law of due process. Although challenges to DOMA could still be heard in state courts, the federal courts have unique expertise in the area of federal constitutional law.

IV. The MPA is a Radical Departure from Our Constitutional and Legal Tradition

Despite many efforts over recent decades to adopt restrictions on federal courts in controversial areas (such as abortion rights and school prayer), no bill instituting a broad ban on a subject matter class or cases has passed (much less one that disadvantages only a discrete

group of people). This may reflect Congress' understanding that such bills tamper with the basic structure of government and weaken our constitutional system. Similarly, this bill should be rejected, as well.

For all of the above reasons, the Human Rights Campaign strongly urges you to vote no on the MPA, H.R. 3313.

Sincerely,

⁶ Redish & Woods, *Congressional Power to Control the Jurisdiction of the Lower Federal Courts: A Critical Review and a New Synthesis*, 124 U. Pa. L. Rev. 45, 161-6.

A handwritten signature in black ink, reading "Cheryl A. Jacques". The script is fluid and cursive, with the first name "Cheryl" and last name "Jacques" clearly legible.

Cheryl Jacques
President

WORKING FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER EQUAL RIGHTS

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